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United States Department of Agriculture

Forest Service

FS-70

Regulations Governing Grazing and Livestock Use on National Forest System Lands and Other Lands Under Forest Service Control

National Forest System

The 155 National Forests, 19 National Grasslands, and other public lands managed by the Forest Service, U.S. Department of Agriculture, contain 187 million acres of land located in 44 States, Puerto Rico, and the Virgin Islands.

As directed by Congress renewable forest resources—water, timber, forage, wildlife, and recreation—are managed under the principles of multiple use and sustained yield. Multiple use means coordinating resource management so that land areas produce a combination of values that best serves the American people. Sustained yield means managing resources to provide services and products at levels as high as can sustained without harming the lands' ability to produce.

Water from the forests and grasslands irrigates millions of agricultural acres and is used for domestic and industrial purposes in hundreds of cities. Timber from the forests is manufactured into 5,000 products sold worldwide. National Forests and National Grasslands provide habitats for millions of big game, small game, and nongame animals as well as birds and fish. In 1975, National Forest System lands produced forage, for which a fee is charged, for 1.6 million adult cattle and 1.9 million adult sheep. An estimated 1.4 million calves and 1.8 million lambs also occupy these lands. Forest recreation includes scenic drives, wilderness travel, picnicking, camping, hiking, skiing, swimming, boating, and, subject to State conservation laws, some of the country's finest hunting and fishing.

The Forest Service pioneered in wilderness preservation in 1924 when it set aside the Nation's first Wilderness. The initial 9.1 million acres of the National Wilderness Preservation System created in 1964 were in 54 National Forest Wildernesses previously classified as Wilderness, Wild, and Canoe Areas. Since the 1964 Act, there have been 64 areas added, totaling 6,333,887 acres.

The Forest Service has two other equally important responsibilities. It maintains eight regional forest and range experiment stations and a Forest Products Laboratory. It also directs programs to encourage and support better management and protection of forest lands in State and private ownership.

Introduction

The Secretary of Agriculture has authority to develop, administer, and protect the range resources, and permit and regulate grazing use on all National Forest System lands and on other lands under Forest Service control. This authority stems mainly from the following acts: (1) The Organic act of June 4, 1897 (30 Stat. 35, as amended; 76 Stat. 1157; 16 U.S.C 551); (2) the Granger-Thye Act of April 24, 1950 (16 U.S.C. 580); (3) the Multiple Use-Sustained Yield Act of June 12, 1960 (74 Stat. 215; 16 U.S.C. 528-531); (4) Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937 (50 Stat. 525, as amended; 78 Stat. 745; 7 U.S.C. 1010-1012); (5) the Federal Land Policy and Management Act, 1976 (Title IV, Pub. L. 94-579, 90 Stat. 2772 as amended, 43 U.S.C. 1751-1753); (6) Public Rangeland Improvement Act of 1978 (92 Stat. 1803, 43 U.S.C. 1901 (note)); (7) Wild Free-Roaming Horses and Burros Act of December 15, 1979 (85 Stat. 649, as amended; 16 U.S.C. 1331-1340). Regulations issued by the Secretary pursuant to these statutes have the force and effect of law.

This booklet contains the regulations governing grazing of livestock on National Forest System lands under Forest Service control. These regulations are also published in the Code of Federal Regulations, Title 36 Parks, Forests, and Public Property, in Parts 211, 222, 261, and 262; and in Title 7, Agriculture, Part 24.

Forest Supervisors have been delegated authority to approve and issue grazing permits, and to control grazing use on National Forest System lands in accordance with the regulations. District Forest Rangers are directly responsible for the administration and management of livestock grazing on the Ranger Districts. Information regarding the interpretation of the regulations and the policies and instructions governing their application at the local levels can be obtained through the Forest Supervisors or District Forest Rangers.

Actions by Forest officers or decisions by them may at times aggrieve a person using, or concerned about the use of, National Forest System lands. Regulations of the Secretary of Agriculture give aggrieved parties the opportunity to have decisions reviewed. Administrative Review Procedures published at 36 CFR 211.19 (see page 45) cover cases where administrative discretion is involved.

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Title 36 Parks, Forests, and Public Property
and
Title 7 Agriculture Part 24
Code of Federal Regulations

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Grazing use on National Forest System lands is allocated through a grazing permit system under conditions and requirements set forth in regulations of the Secretary of Agriculture.

Regulation 36 C.F.R. 222-Range Management

Subpart A—Grazing and Livestock Use on the National Forest System

222.1 Authority and definitions.

(a) *Authority.* The Chief, Forest Service, shall develop, administer and protect the range resources and permit and regulate the grazing use of all kinds and classes of livestock on all National Forest System lands and on other lands under Forest Service control. He may redelegate this authority.

(b) *Definitions.* (1) An "allotment" is a designated area of land available for livestock grazing.

(2) An "allotment management plan" is a document that specifies the program of action designated to reach a given set of objectives. It is prepared in consultation with the permittee(s) involved and:

(i) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple use, sustained yield, economic, and other needs and objectives as determined for the lands involved; and

(ii) Describes the type, location, ownership, and general specifications for the range improvements in place or to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(iii) Contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the Chief, Forest Service, consistent with applicable law.

(3) "Base property" is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit.

(4) "Cancel" means action taken to permanently invalidate a term grazing permit in whole or in part.

(5) A "grazing permit" is any document authorizing livestock to use National Forest

System or other lands under Forest Service control for the purpose of livestock production including:

(i) "Temporary grazing permits" for grazing livestock temporarily and without priority for reissuance.

(ii) "Term permits" for up to 10 years with priority for renewal at the end of the term.

(6) "Land subject to commercial livestock grazing" means National Forest System lands within established allotments.

(7) "Lands within National Forest in the 16 contiguous western States" means lands designated as National Forest within the boundaries of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah.

(8) "Livestock" means animals of any kind kept or raised for use or pleasure.

(9) "Livestock use permit" means a permit issued for not to exceed one year where the primary use is for other than grazing livestock.

(10) "Modify" means to revise the terms and conditions of an issued permit.

(11) "National forest System lands," are the National Forests, National Grasslands, Land Utilization Projects, and other Federal lands for which the Forest Service has administrative jurisdiction.

(12) "On-and-off grazing permits" are permits with specific provisions on range only part of which is National Forest System lands or other lands under Forest Service control.

(13) "On-the-ground expenditure" means payment of direct project costs of implementing an improvement or development, such as survey and design, equipment, labor and material (or contract) costs, and on-the-ground supervision.

(14) "Other lands under Forest Service control" are non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.

(15) "Private land grazing permits" are permits issued to persons who control grazing lands adjacent to National Forest System lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.

(16) "Permittee" means any person who has been issued a grazing permit.

(17) "Permitted livestock" is livestock authorized by a written permit.

(18) "Person" means any individual, partnership, corporation, association, organization, or other private entity, but does not include Government Agencies.

(19) "Range betterment" means rehabilitation, protection and improvement of National Forest System lands to arrest range deterioration and improve forage conditions, fish and wildlife habitat, watershed protection, and livestock production.

(20) "Range betterment fund" means the fund established by title IV, section 401(b)(1), of the Federal Land Policy and Management Act of 1976. This consists of 50 percent of all monies received by the United States as fees for grazing livestock on the National Forests in the 16 contiguous western States.

(21) "Range Improvement" means any activity or program designed to improve production of forage and includes facilities or treatments constructed or installed for the purpose of improving the range resource or the management of livestock and includes the following types:

(i) "Non-structural" which are practices and treatments undertaken to improve range not involving construction of improvements.

(ii) "Structural" which are improvements requiring construction or installation undertaken to improve the range or to facilitate management or to control distribution and movement of livestock.

(A) "Permanent" which are range improvements installed or constructed and become a part of the land such as: dams, ponds, pipelines, wells, fences, trails, seeding, etc.

(B) "Temporary" which are short-lived or portable improvements that can be removed such as: troughs, pumps and electric fences, including improvements at authorized places of habitation such as line camps.

(22) "Suspend" means temporary withholding of a term grazing permit privilege, in whole or in part.

(23) "Term period" means the period for which term permits are issued, the maximum of which is 10 years.

(24) "Transportation livestock" is livestock used as pack and saddle stock for travel on the National Forest System.

[42 FR 56732, Oct. 28, 1977; 44 FR 61345, Oct 25, 1979]

222.2 Management of the range environment.

(a) Allotments will be designated on the National Forest System and on other lands under Forest Service control where the land is available for grazing. Associated private and other public lands should, but only with the consent of the landowner, leassee, or agency, be considered in such designations to form logical range management units.

(b) Each allotment will be analyzed and with careful and considered consultation and cooperation with the affected permittees, landowners, and grazing advisory boards involved, as well as the State having land within the area covered, and an allotment management plan developed. The plan will then be approved and implemented. The analysis and plan will be updated as needed.

(c) National Forest System lands will be allocated for livestock grazing and the allotment management plans will be prepared consistent with land management plans.

[42 FR 56732, Oct. 28, 1977; 44 FR 61345, Oct. 25, 1979]

222.3 Issuance of grazing and livestock use permits.

(a) Unless otherwise specified by the Chief, Forest Service, all grazing and livestock use on National Forest System lands and on other lands under Forest Service control must be authorized by a grazing or livestock use permit.

(b) Grazing permits and livestock use permits convey no right, title, or interest held by the United States in any lands or resources.

(c) The Chief, Forest Service, is authorized to issue permits for livestock grazing and other use by livestock of the National Forest System and on other lands under Forest Service control as follows:

(1) Grazing permits with priority for renewal may be issued as follows: On National Forests in the 16 contiguous western States 10-year term permits will be issued unless the land is pending disposal, or will be devoted to other uses prior to the end of ten years, or it will be in the best interest of sound land management to specify a shorter term. On National Forest System lands other than National Forests in the 11 contiguous western States, the permit term shall be for periods of 10 years or less. Term grazing permits for periods of 10 years or less in the form of grazing agreements may be issued to cooperative grazing associations or similar organizations incorporated or otherwise established pursuant to State law. Such an agreement will make National Forest System lands and improvements available to the association for grazing purposes. The association may allocate and administer the available grazing in accordance with provisions of the grazing agreement and Forest Service policies. Term permits authorized in this paragraph may be in the form of private land or on-and-off grazing permits where the person is qualified to hold such permits under provisions the Chief may require. Permits issued under this paragraph are subject to the following:

(i) Paid term permits will be issued to persons who own the livestock to be grazed and such base ranch property as may be required, provided the land is determined to be available for grazing purposes by the Chief, Forest Service, and he finds that capacity exists to graze specified numbers of animals.

(ii) A term permit holder has first priority for receipt of a new permit at the end of the term period provided he has fully complied with the terms and conditions of the expiring permit.

(iii) In order to update terms and conditions, term permits may be cancelled at the end of the calendar year of the midyear of the decade (1985, 1995, etc.), provided they are reissued to the existing permit holder for a new term of 10 years.

(iv) New term permits may be issued to the purchaser of a permittee's permitted livestock and/or base property, provided the permittee waives his term permit to the United States and provided the purchaser is otherwise eligible and qualified.

(v) If the permittee chooses to dispose of all or part of his base property or permitted livestock (not under approved nonuse) but does not choose to waive his term permit, the Forest Supervisor will give written notice that he no longer is qualified to hold a permit, provided he is given up to one year to reestablish his qualifications before cancellation action is final.

(vi) The Chief, Forest Service, shall prescribe provisions and requirements under which term permits will be issued, renewed, and administered, including;

(A) The amount and character of base property and livestock the permit holder shall be required to own.

(B) Specifying the period of the year the base property shall be capable of supporting permitted livestock.

(C) Acquisition of base property and/or permitted livestock.

(D) Conditions for the approval of nonuse of permit for specified periods.

(E) Upper and special limits governing the total number of livestock for which a person is entitled to hold a permit.

(F) Conditions whereby waiver of grazing privileges may be confirmed and new applicants recognized.

(2) Permits with no priority for reissuance, subject to terms and conditions as the Chief, Forest Service, may prescribe, are authorized as follows:

(i) Temporary grazing permits for periods not to exceed one year, and on a charge basis, may be issued:

(A) To allow for use of range while a term grazing permit is held in suspension.

(B) To use forage created by unusually favorable climatic conditions.

(C) To use the forage available when the permit of the normal user's livestock is in nonuse status for reasons of personal convenience.

(D) To allow a person to continue to graze livestock for the remainder of the grazing season where base property has been sold, the permit waived, and a new term permit issued.

(E) To allow grazing use in the event of drought or other emergency of National or Regional scope where such use would not result in permanent resource damage.

(ii) Livestock use permits for not to exceed one year may be issued under terms and conditions prescribed by the Chief, Forest Service, as follows:

(A) Paid permits for transportation livestock to persons engaged in commercial packing, dude ranching, or other commercial enterprises which involve transportation livestock including mining, ranching, and logging activities.

(B) Paid or free permits for research purposes and administrative studies.

(C) Paid or free permits to trail livestock across National Forest System lands.

(D) Free permits to persons who reside on ranch or agricultural lands within or contiguous to National Forest System lands for

not to exceed 10 head of livestock owned or kept and whose products are consumed or whose services are used directly by the family of the resident, and who distinctly need such National Forest System lands to support such animals.

(E) Free permits to campers and travelers for the livestock actually used during the period of occupancy. This may be authorized without written permit.

(F) Paid or free permits for horses, mules, or burros to persons who clearly need National Forest System land to support the management of permitted livestock.

(G) Free permits for horses, mules, or burros to cooperators who clearly need National Forest System land to support research, administration or other work being conducted. This may be authorized without written permit.

(H) Paid permits to holders of grazing permits for breeding animals used to service livestock permitted to graze on lands administered by the Forest Service.

(I) Paid permits or cooperative agreements entered into as a management tool to manipulate revegetation on a given parcel of land.

[43 FR 27532, June 26, 1978; 44 FR 61345, Oct. 25, 1979]

222.4 Changes in grazing permits.

(a) The Chief, Forest Service, is authorized to cancel, modify, or suspend grazing and livestock use permits in whole or in part as follows:

(1) Cancel permits where lands grazed under the permit are to be devoted to another public purpose including disposal. In these cases, except in an emergency, no permit shall be cancelled without two years' prior notification.

(2) Cancel the permit in the event the permittee:

(i) Refuses to accept modification of the terms and conditions of an existing permit.

(ii) Refuses or fails to comply with eligibility or qualification requirements.

(iii) Waives his permit back to the United States.

(iv) Fails to restock the allotted range after full extent of approved personal convenience nonuse has been exhausted.

(v) Fails to pay grazing fees within established time limits.

(3) Cancel or suspend the permit if the permittee does not comply with provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based.

(4) Cancel or suspend the permit if the permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto.

(5) Cancel or suspend the permit if the permit holder is convicted for failing to comply with, Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation; fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit.

(6) Modify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs.

(7) Modify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request. One year's notice will be given of such modification, except in cases of emergency.

(b) Association permits or grazing agreements may be canceled for noncompliance with title VI of the Civil Rights Act of 1964 and Department of Agriculture regulation promulgated thereunder.

222.6 Compensation for permittees' interest in authorized permanent improvements.

(a) Whenever a term permit for grazing livestock on National Forest land in the 16

contiguous western States is canceled in-whole or in part to devote the lands covered by the permit to another public purpose, including disposal, the permittee shall receive from the United States a reasonable compensation for the adjusted value of his interest in authorized permanent improvements placed or constructed by him on the lands covered by the canceled permit. The adjusted value is to be determined by the Chief, Forest Service. Compensation received shall not exceed the fair market value of the terminated portion of the permittee's interest therein.

(b) In the event a permittee waives his grazing permit in connection with sale of his base property or permitted livestock, he is not entitled to compensation.

[42 FR 56732, Oct. 28, 1977; 44 FR 61345, Oct. 25, 1979]

222.7 Cooperation in management.

(a) *Cooperation with local livestock associations.* (1) Authority. The Chief, Forest Service, is authorized to recognize, cooperate with, and assist local livestock associations in the management of the livestock and range resources on a single range allotment, associated groups of allotments, or other association-controlled lands on which the member's livestock are permitted to graze.

(2) Purposes. These associations will provide the means for the members to:

(i) Manage their permitted livestock and the range resources.

(ii) Meet jointly with Forest officers to discuss and formulate programs for management of their livestock and the range resources.

(iii) Express their wishes through their designated officers or committees.

(iv) Share costs for handling of livestock, construction and maintenance of range improvements or other accepted programs deemed needed for proper management of the permitted livestock and range resources.

(v) Formulate association special rules needed to ensure proper resource management.

(3) Requirements for recognition. The requirements for receiving recognition by the Forest Supervisor are:

(i) The members of the association must constitute a majority of the grazing permittees on the range allotment or allotments involved.

(ii) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.

(iii) The officers other than the Secretary and Treasurer must be grazing permittees on the range allotment or allotments involved.

(iv) The association's activities must be governed by a constitution and bylaws acceptable to the Forest Supervisor and approved by him.

(4) Withdrawing recognition. The Forest Supervisor may withdraw his recognition of the association whenever:

(i) The majority of the grazing permittees request that the association be dissolved.

(ii) The association becomes inactive, and does not meet in annual or special meetings during a consecutive 2-year period.

(b) *Cooperation with national, State, and county livestock organizations.* The policies and programs of national, State, and county livestock organizations give direction to, and reflect in, the practices of their members. Good working relationships with these groups are conducive to the betterment of range management on both public and private lands. The Chief, Forest Service, will endeavor to establish and maintain close working relationships with National livestock organizations who have an interest in the administration of National Forest System lands, and direct-Forest officers to work cooperatively with State and county livestock organizations having similar interests.

(c) *Interagency cooperation.* The Chief, Forest Service, will cooperate with other Federal agencies which have interest in improving range management on public and private lands.

(d) *Cooperation with others.* The Chief, Forest Service, will cooperate with other agencies, institutions, organizations, and individuals who have interest in improvement of range management on public and private lands.

222.8 Cooperation in control of estray or unbranded livestock, animal diseases, noxious farm weeds, and use of pesticides.

(a) Insofar as it involves National Forest System lands and other lands under Forest Service control or the livestock which graze thereupon, the Chief, Forest Service, will cooperate with:

(1) State, county, and Federal agencies in the application and enforcement of all laws and regulations relating to livestock diseases, sanitation and noxious farm weeds.

(2) The Animal and Plant Health Inspection Service and other Federal or State agencies and institutions in surveillance of pesticide spray programs; and

(3) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock to the extent it does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971.

(b) The Chief, Forest Service, will cooperate with county or other local weed control districts in analyzing noxious farm weed problems and developing control programs in areas of which the National Forests and National Grasslands are a part.

(85 Stat. 649 (U.S.C. 1331-1340))

222.9 Range improvements.

(a) The Chief, Forest Service, is authorized to install and maintain structural and nonstructural range improvements needed

to manage the range resource on National Forest System lands and other lands controlled by the Forest Service.

(b) Such improvements may be constructed or installed and maintained, or work performed by individuals, organizations or agencies other than the Forest Service subject to the following:

(1) All improvements must be authorized by cooperative agreement or memorandum of understanding, the provisions of which become a part of the grazing permit(s).

(2) Title to permanent structural range improvements shall rest in the United States.

(3) Title to temporary structural range improvements may be retained by the Cooperator where no part of the cost for the improvement is borne by the United States.

(4) Title to nonstructural range improvements shall vest in the United States.

(5) Range improvement work performed by a cooperator or permittee on National Forest System lands shall not confer the exclusive right to use the improvement or the land influenced.

(c) A user of the range resource on National Forest System lands and other lands under Forest Service control may be required by the Chief, Forest Service, to maintain improvements to specified standards.

(d) Grazing fees or the number of animal months charged shall not be adjusted to compensate permittees for range improvement work performed on National Forest System lands: provided, that, in accordance with section 32(c), title III, Bankhead-Jones Farm Tenant Act, the cost to grazing users in complying with requirements of a grazing permit or agreement may be considered in determining the annual grazing fee on National Grasslands or land utilization projects if it has not been used in establishing the grazing base value.

222.10 Range betterment fund.

In addition to range development which is accomplished through funds from the

rangeland management budget line item and the Granger-Thye Act, and deposited and nondeposited cooperative funds, range development may also be accomplished through use of the range betterment fund as follows:

(a) On National Forest land within the 16 contiguous western States, the Chief, Forest Service, shall implement range improvement programs where necessary to arrest range deterioration and improve forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. One-half of the available funds will be expended on the National Forest where derived. The remaining one-half of the fund will be allocated for range rehabilitation, protection and improvements on National Forest lands within the Forest Service Regions where they were derived. During the planning process there will be consultation with grazing permittees who will be affected by the range rehabilitation, protection and improvements, and other interested persons or organizations.

(b) Range betterment funds shall be utilized only for on-the-ground expenditure for rangeland betterment, including, but not limited to, seeding and reseeding, fence construction, water development, weed and other plant control, and fish and wildlife habitat enhancement within allotments.

[42 FR 56732, Oct. 28, 1977; 44 FR 61345, Oct. 25, 1979]

222.11 Grazing advisory boards.

(a) *Establishment.* Persons holding term permits to graze livestock on National Forest System lands with headquarters, office in the 11 contiguous western States having jurisdiction over more than 500,000 acres of land subject to commercial livestock grazing may petition the Forest Supervisor for establishment of a statutory grazing advisory board in accordance with provisions of the Federal Land Policy and Management Act of 1976.

(1) Upon being properly petitioned by a simple majority (more than 50 percent) of term grazing permittees under the jurisdiction of such headquarters office, the Secretary shall establish and maintain at least one grazing advisory board.

(2) The Chief, Forest Service, shall determine the number of such boards, the area to be covered, and the number of advisers on each board.

(3) Processing Petitions. Upon receiving a proper petition from the grazing permittees, the Forest Supervisor will request the Chief, Forest Service, through the Regional Forester, to initiate action to establish grazing advisory boards in accordance with regulations of the Secretary of Agriculture. Grazing advisory boards will comply with the provisions of the Federal Advisory Committee Act.

(b) *Membership.* Grazing advisory boards established under this authority shall consist of members who are National Forest System term grazing permittees under the jurisdiction of a National Forest headquarters office in the 11 contiguous western States, provided board members shall be elected by term grazing permittees in the area covered by the board.

(c) *Elections.* The Forest Supervisor of the headquarters office shall prescribe and oversee the manner in which permittees are nominated and board members are elected. Nominations will be made by petition with all term grazing permittees under the jurisdiction of such headquarters office being eligible for membership on the board. All members of the board will be elected by secret ballot with each term grazing permittee in the area covered by the board being qualified to vote. No person shall be denied the opportunity to serve as a grazing advisory board member because of race, color, sex, religion, or national origin. No board member shall concurrently serve on another USDA advisory committee. The Forest Supervisor shall determine and announce the

results of the election of the members of the board and shall recognize the duly elected board as representing National Forest System term grazing permittees in the areas for which it is established. Board members will be elected to terms not to exceed 2 years.

(d) *Charter and bylaws.* (1) The Forest Supervisor will prepare a charter to be filed with the Department and the Congress as required by Section 9(c) of the Federal Advisory Committee Act.

(2) A duly recognized grazing advisory board may, with the concurrence of a majority of its members and the Forest Supervisor, adopt bylaws to govern its proceedings.

(e) *Function.* The function of grazing advisory boards will be to offer advice and make recommendations concerning the development of allotment management plans and the utilization of range betterment funds.

(f) *Meetings.* The Forest Supervisor shall call at least one meeting of each board annually, and call additional meetings as needed to meet the needs of the permittees and the Forest Service. Each meeting shall be conducted in accordance with an agenda approved by the Forest Supervisor and in the presence of a Forest officer.

(g) *Termination.* (1) Grazing advisory boards established under the Federal Land Policy and Management Act of 1976 shall continue until December 31, 1985, unless terminated earlier.

(2) The Forest Supervisor may withdraw recognition of any board whenever:

(i) A majority of the term grazing permittees for the area which the board represents requests that the board be dissolved.

(ii) The board becomes inactive and does not meet at least once each calendar year.

(86 Stat. 770 (5 U.S.C., App. 1))

[43 FR 27532, June 26, 1978; 44 FR 61345, Oct. 25, 1979]

Subpart B—Management of Wild Free-Roaming Horses and Burros

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Authority: 85 Stat. 649, as amended (16 U.S.C. 1331-1340); Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011); 92 Stat. 1803 (43 U.S.C. 1901 note).

222.20 Authority and definitions.

(a) *Authority.* The Chief, Forest Service, shall protect, manage, and control wild free-roaming horses and burros on lands of the National Forest System and shall maintain vigilance for the welfare of wild free-roaming horses and burros that wander or migrate from the National Forest System. If these animals also use lands administered by the

Bureau of Land Management as a part of their habitat, the Chief, Forest Service, shall cooperate to the fullest extent with the Department of the Interior through the Bureau of Land Management in administering the animals.

(b) *Definitions.*

(1) "Act" means the Act of December 15, 1971 (85 Stat. 649, as amended, 16 U.S.C. 1331-1340)

(2) "Captured animal" means a wild free-roaming horse or burro taken and held in the custody of an authorized officer, his delegate, or agent. This term does not apply to an animal after it is placed in private custody through a Private Maintenance and Care agreement.

(3) "Excess animals" means wild free/roaming horses and burros which have been removed by authorized personnel pursuant to applicable law or which must be removed from an area in order to preserve and maintain a thriving natural ecological balance in coordination with other resources and activities.

(4) "Herd" means one or more stallions and their mares, or jacks and their jennies.

(5) "Humane treatment" means kind and merciful treatment, without causing unnecessary stress or suffering to the animal.

(6) "Inhumane treatment" means causing physical stress to an animal through any harmful action or omission that is not compatible with standard animal husbandry practices; causing or allowing an animal to suffer from a lack of necessary food, water, or shelter; using any equipment, apparatus, or technique during transportation, domestication, or handling that causes undue injury to an animal; or failing to treat or care for a sick or injured animal.

(7) "Lame" means a wild free-roaming horse or burro with malfunctioning muscles, ligaments or limbs that impair freedom of movement.

(8) "Malicious harassment" means any intentional act demonstrating deliberate

disregard for the well-being of wild free-roaming horses and burros and which creates a likelihood of injury or is detrimental to normal behavior pattern of wild free-roaming horses or burros including feeding, watering, resting, and breeding. Such acts include, but are not limited to, unauthorized chasing, pursuing, herding, roping, or attempting to gather wild free-roaming horses or burros. It does not apply to activities conducted by or on behalf of the Forest Service or the Bureau of Land Management in implementation or performance of duties and responsibilities under the Act.

(9) "National Advisory Board" means the Advisory Board as established jointly by the Secretary of Agriculture and the Secretary of the Interior under the provisions of the Act.

(10) "National Forest System" includes the National Forests, National Grasslands, and other Federal lands for which the Forest Service has administrative jurisdiction.

(11) "Old" means a wild free/roaming horse or burro characterized by inability to fend for itself because of age, physical deterioration, suffering or closeness to death.

(12) "Sick" means a wild free-roaming horse or burro with failing health, infirmness, or disease from which there is little chance of recovery.

(13) "Wild free-roaming horses and burros" mean all unbranded and unclaimed horses and burros and their progeny that have used lands of the National Forest System on or after December 15, 1971, or do hereafter use these lands as all or part of their habitat, but does not include any horse or burro introduced onto the National Forest System on or after December 15, 1971, by accident, negligence, or willful disregard of private ownership. Unbranded, claimed horses and burros for which the claim is found to be erroneous, are also considered as wild and free-roaming if they meet the criteria above.

(14) "Wild-horse and burro range" means an area of National Forest System specifically so designated by the Chief, Forest Service, from wild horse and burro territory, for the purpose of sustaining an existing herd or herds of wild free-roaming horses and burros, provided the range does not exceed known territorial limits and is devoted principally, but not necessarily exclusively, to the welfare of the wild horses and burros, in keeping with the multiple-use management concept for the National Forest System.

(15) "Wild horse and burro territory" means lands of the National Forest System which are identified by the Chief, Forest Service, as lands which were territorial habitat of wild free-roaming horses and/or burros at the time of the passage of the Act.

222.21 Administration of wild free-roaming horses and burros and their environment.

(a) The Chief, Forest Service, shall:

(1) Administer wild free-roaming horses and burros and their progeny on the National Forest System in the areas where they now occur (wild horse and burro territory) to maintain a thriving ecological balance considering them an integral component of the multiple use resources, and regulating their population and accompanying need for forage and habitat in correlation with uses recognized under the Multiple-Use Sustained Yield Act of 1960 (70 Stat. 215; 16 U.S.C. 528–531);

(2) Provide direct administration for the welfare of wild free-roaming horses and burros that are located on the National Forest System by use of the Forest Service organization rather than by the granting of leases and permits for maintenance of these animals to individuals and organizations;

(3) Establish wild horse and burro territories in accordance with the Act and continue recognition of such territories where it is determined that horses and/or burros will

be recognized as part of the natural system and designate areas within these territories as a specific wild horse and burro range in those situations where he determines such designation as especially fitting to meet the purposes of the Act and the Multiple Use Sustained-Yield Act, after consultation with the appropriate State agencies where such range is proposed and with the National Advisory Board;

(4) Analyze each wild horse or burro territory and, based on the analysis, develop and implement a management plan, which analysis and plans will be updated, whenever needed, as determined by conditions on each territory;

(5) Maintain a current inventory of wild free-roaming horses and burros on each territory to determine whether and where excess animals exists;

(6) Based on paragraphs (a) (4) and (5) of this section, determine appropriate management levels, whether action should be taken to remove excess animals and what actions are appropriate to achieve the removal or destruction of excess animals; and

(7) In making determinations cited in this section, the authorized officer shall consult with the U.S. Fish and Wildlife Service, wildlife agencies in the State, individuals and organizations independent of Federal or State Government recommended by the National Academy of Sciences, and any other individual or organizations determined to have scientific expertise or special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to range management.

222.22 Ownership claims.

(a) Any person claiming ownership under State branding and estray laws of branded or unbranded horses or burros within a wild horse or burro territory or range on the National Forest System where such animals are not authorized must present evidence of ownership to justify a roundup

before permission will be granted to gather such animals. Claims of ownership with supporting evidence were required to be filed during a claiming period which expired November 15, 1973. Unauthorized privately owned horses or burros entering the National Forest System after November 15, 1973, which become intermingled with wild horses or burros, may be claimed by filing an application with the District Ranger. All authorizations to gether claimed animals shall be in writing in accordance with instructions as the Chief, Forest Service, may prescribe. After such public notice as an authorized officer deems appropriate to inform interested parties, gathering operations may be authorized. The authorization shall provide that the gathering or roundup be consistent with regulations, and will (1) establish a specific reasonable period of time to allow the gathering of claimed animals and (2) stipulate other conditions, including visual observation by Forest Service personnel deemed necessary to ensure humane treatment of associated wild free-roaming horses and burros and to protect other resources involved.

(b) Prior to removal of claimed animals which have been captured from the National Forest System, claimants shall substantiate their claim of ownership in accordance with whatever criteria are cooperatively agreed to between the Forest Service and the State agency administering the State estray laws. In the absence of an agreement, ownership claims shall be substantiated in accordance with State law and subject to approval of the Forest Service.

222.23 Removal of other horses and burros.

Horses and burros not within the definition in §222.20(b)(13) which are introduced onto Wild Horse and Burro Territories or ranges after December 15, 1971, by accident, negligence, or willful disregard of private ownership, and which do not become interm-

ingled with wild free-roaming horses or burros shall be considered as unauthorized livestock and treated in accordance with provisions in 36 CFR 261.7 and 262.2.

222.24 Use of helicopters, fixed-wing aircraft and motor vehicles.

The Chief, Forest Service, is authorized to use helicopters, fixed-wing aircraft, and motor vehicles in a manner that will ensure humane treatment of wild free-roaming horses and burros as provided by the following paragraphs:

(a) Prior to using helicopters in capture operations and/or using motor vehicles for the purpose of transporting captured animals, a public meeting will be held in the proximity of the territory where the capture operation is proposed.

(b) Helicopters may be used in all phases of the administration of the Act including, but not limited to, inventory, observation, surveillance, and capture operations. In capture operations, helicopters may be used to locate the animals involved to assist ground crews in moving the animals and for related purposes, such as, to transport personnel and equipment. The condition of the animals shall be continuously observed by the authorized officer and, should signs of harmful stress be noted, the source of stress shall be removed so as to allow recovery. Helicopters may be used in roundups or other capture operations subject to the following procedures.

(1) Helicopters shall be used in such a manner that bands or herds will tend to remain together.

(2) Horses or burros will not be moved at a rate which exceeds limitations set by the authorized officer who shall consider terrain, weather, distance to be traveled, and condition of the animals.

(3) Helicopters shall be used to observe the presence of dangerous areas and may be used to move animals away from hazards during capture operations.

(4) During capture operations, animals shall be moved in such a way as to prevent harmful stress or injury.

(5) The authorized officer shall supervise all helicopter uses as follows:

(i) Have means to communicate with the pilot and be able to direct the use of the helicopter; and

(ii) Be able to observe effects of the use of the helicopters on the well-being of the animals.

(c) Fixed-wing aircraft may be used for inventory, observation, and surveillance purposes necessary in administering the Act. Such use shall be consistent with the Act of September 8, 1959, as amended (18 U.S.C. 41 et seq.). Fixed-wing aircraft shall not be used in connection with capture operations except as support vehicles.

(d) Motor vehicles may be used in the administration of the Act except that such vehicles shall not be used for driving or chasing wild horses or burros in capture operations. Motor vehicles may also be used for the purpose of transporting captured animals subject to the following humane procedures.

(1) Such transportation shall comply with appropriate State and Federal laws and regulations applicable to humane transportation of horss and burros.

(2) Vehicles shall be inspected by an authorized officer prior to use to ensure vehicles are in good repair and of adequate rate capacity.

(3) Vehicles shall be carefully operated to ensure that captured animals are transported without undue risk or injury.

(4) Where necessary and practical, animals shall be sorted as to age, temperament, sex, size, and condition so as to limit, to the extent possible, injury due to fighting and trampling.

(5) The authorizing officer shall consider the condition of the animals, weather conditions, type of vehicle, and distance to be traveled when planning for transportation of captured animals.

(6) Unless otherwise approved by the authorized officer, the transportation of wild free-roaming horses and burros shall be limited in sequence, to a maximum of 24 hours in transit followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

222.25 Protection of wild free-roaming horses and burros when they are upon other than the National Forest System or public lands.

Individual animals and herds of wild free-roaming horses and burros will be under the protection of the Chief, Forest Service, even though they may thereafter move to lands of other ownership or jurisdiction as a part of their annual territorial habitat pattern or for other reasons. The Chief will exercise surveillance of these animals through the use of cooperative agreements and as otherwise authorized by law and act immediately through appropriate administrative or criminal and civil judicial procedures to provide them the protective measures of the Act at any time he has cause to believe its provisions are being violated.

222.26 Removal of wild free-roaming horses and burros from private lands.

Owners of land upon which wild free-roaming horses and burros have strayed from the National Forest System may request their removal by calling the nearest office of either the Forest Service or Federal Marshall.

222.27 Maintenance of wild free-roaming horses and burros on privately-owned lands.

Owners of land who wish to maintain wild free-roaming horses and burros which have strayed onto their lands from the National Forest System may do so by notifying the nearest office of the Forest Service in a timely fashion and providing such informa-

tion on a continuing basis as the Chief, Forest Service, may require. Such owners shall protect the wild free-roaming horses and burros on their lands. They may not, in so maintaining these animals, impede their return to National Forest System lands unless authorized by agreement with the Forest Service.

222.28 Agreements.

The Chief, Forest Service, may enter into agreements as he deems necessary to further the protection, management, and control of wild free-roaming horses and burros.

222.29 Relocation and disposal of animals.

(a) The Chief, Forest Service, shall, when he determines over-population of wild horses and burros exists and removal is required, take immediate necessary action to remove excess animals from that particular territory. Such action shall be taken until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from deterioration associated with over-population.

(b) No person except an authorized Forest Service officer or his agent shall destroy, remove, or relocate any wild free-roaming horse or burro located on the National Forest System.

(c) Wild horses and burros shall be relocated or removed in the following order of priority:

(1) In the most humane manner possible, sick, lame, or old animals shall be destroyed;

(2) Relocate animals to other National Forest System lands which were identified as 1971 wild horse or burro territory, providing suitable habitat exists and relocation of animals will not jeopardize vegetation condition;

(3) Relocate animals to other Federally-owned lands which were identified as 1971 wild horse or burro occupied lands, providing suitable habitat exists and relocation of

animals will not jeopardize vegetation condition and animals are requested by the appropriate land manager having jurisdiction;

(4) Place animals under private maintenance and care agreements where there is an adoption demand by qualified individuals, groups, or Government agency, and for which there is assurance of humane treatment and care, provided not more than four animals are placed under private maintenance and care agreements per year to any individual, organization, or government agency unless there is a determination expressed otherwise in writing, by an authorized Forest Service Officer; and

(5) Excess animals, for which an adoption demand by qualified applicants does not exist, shall be destroyed in the most humane manner possible, and if several methods are equally humane, select the most cost efficient.

(d) Where excess animals have been placed under private maintenance and care agreements after December 15, 1971, as provided for in paragraph (c)(4) of this section, and animals have been provided humane conditions, treatment, and care, for a period of one year, the Chief, Forest Service, may grant title to not more than four animals per year to each individual, organization, or government agency.

(6) The applicants must make written application for title and/or adoption and must be of legal age in the State in which they reside. Humane conditions treatment and care must have been provided for no less than one year preceding the filing of the application for title. Unless waived *in writing* the application for title shall include a written statement by a licensed veterinarian attesting that the animal is in good condition.

222.30 Disposal of carcasses.

Carcasses of animals that have lost their status as wild free-roaming horses or burros may be disposed of in any customary manner acceptable under applicable State

sanitary statues including disposal through a rendering plant.

222.31 Loss of status.

Wild free-roaming horses and burros or their remains shall lose their status under the 1971 Wild Horses and Burros Act.

(a) Upon passage of title pursuant to §222.29(d) and (e).

(b) Upon transfer to private maintenance and care pursuant to §222.29(c)(4) and die of natural causes before passage of title;

(c) Upon destruction by an authorized Forest officer pursuant to §222.29(c)(5).

(d) Upon death by natural causes or accident on the National Forest System or on private lands where maintained thereon pursuant to §222.27 and disposal is authorized by a Forest officer; and

(e) Upon destruction or death for purposes of or incident to the program authorized in §222.20(a).

222.32 Use of non-Forest Service personnel.

The Chief, Forest Service, may authorize the use of non-Forest Service personnel to assist in specific situations of short duration.

222.33 Management coordination.

All management activities by the Chief, Forest Service, shall be carried out in consultation with the appropriate agencies of the State involved. The expert advise of qualified scientists in the fields of biology and ecology shall also be sought in administering wild free-roaming horses and burros. The advice and suggestions of agencies, qualified scientists, and other qualified interest groups shall be made available to the National Advisory Board for their use and consideration. Actions taken in connection with private ownership claims shall be coordinated to the fullest extent possible with the State agency responsible for livestock estray law administration.

222.34 National Advisory Board.

The Chief, Forest Service, shall appoint a representative to attend meetings of the National Advisory Board for Wild Free-Roaming Horses and Burros and to function as prescribed by the Memorandum of Agreement between the Department of the Interior and the Department of Agriculture and the Joint Charter issued by the Secretary of the Interior and the Secretary of Agriculture. Policies and guidelines relative to proposals for the establishment of ranges, adjustments in number, relocation and disposal of animals, and other matters relating generally to the protection, management, and control of wild free-roaming horses and burros shall be presented to the National Advisory Board for recommendations.

222.35 Studies.

The Chief, Forest Service, is authorized and directed to undertake those studies of the habits and habitat of wild free-roaming horses and burros that he may deem necessary. In doing so, he shall consult with the appropriate agencies of the State(s) involved and the National Academy of Sciences.

222.36 Arrest.

Any employee designated by the Chief, Forest Service, shall have the power to arrest without warrant, any person committing in the presence of the employee a violation of the Act and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so designated shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act.

Subpart C—Grazing Fees

222.50 General Procedures.

(a) Fees shall be charged for all livestock grazing or livestock use of National Forest system lands, or other lands under

Forest Service control. An exception is livestock authorized free of charge under provisions of §222.3(c)(2)(ii)(B)-(G).

(b) Guiding establishment of fees are the law and general governmental policy as established by Bureau of the Budget (now, Office of Management and Budget) Circular A-25 of September 23, 1959, which directs that a fair market value be obtained for all services and resources provided the public through establishment of a system of reasonable fee charges, and that the users be afford equitable treatment. This policy precludes a monetary consideration in the fee structure for any permit value that may be capitalized into the permit holder's private ranching operation.

(c) The grazing fee shall be charged for each unit month of grazing or livestock use. A unit is: each cow, bull, steer, heifer, horse or mule, six (6) months of age or older at the time of entering National Forest System lands for grazing, or which becomes twelve (12) months of age during the permitted period of use; each weaned cow, bull, steer, heifer, horse or mule regardless of age; five (5) adult sheep or goats; or, five weaned sheep or goats regardless of age. A unit month is one unit of grazing or use for one month.

(d) No additional charge will be made for the privilege of lambing upon National Forest System lands, or other lands under Forest Service control.

(e) Transportation livestock may be charged for at a special rate, and at a minimum established for such use. Fees for horses, mules, or burros associated with management of permitted livestock on an allotment, or for research purposes and administrative studies, and authorized under provisions of paragraph (b) of this section.

(f) The fees for trailing livestock across National Forest System lands will conform with the rates established for other livestock. Where practicable, fees for trailing permitted

livestock will be covered in the regular grazing fee and the crossing period covered in the regular grazing period.

(g) All fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use unless otherwise authorized by the Chief Forest Service.

(h) Unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. The base will be adjusted annually by the same indexes used to adjust the regular fee. This rate also will apply to excess numbers of livestock grazed by permittees; or, to livestock grazed outside the permitted grazing season.

(i) Refunds or credits may be allowed under justifiable conditions and circumstances as the Chief, Forest Service, may specify.

(j) The fee year for the pupose of charging grazing fees will be March 1 through the following February.

(k) The data year for the purpose of collecting beef cattle price data for computing indexes will be November 1 through the following October and apply to the following fee year.

222.51 National Forests in 16 Western States.

(a) Grazing fees are established on lands designated National Forests and Land Utilization Projects in the 16 contiguous Western States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. (National Grasslands are excluded, see §222.52.)

(b) The fee for domestic livestock grazing on the National Forests and Land Utilization Projects in the 16 contiguous Western States shall be the amount which Congress finds represents the economic value of the use of the land to the user, and under which Congress finds fair market value for public grazing equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index, added to the Combined Index (Beef Cattle Price Index minus the Price Paid Index) and divided by 100.

(c) Starting with 1979 and continuing through 1985 fees shall be adjusted each year to the fee as computed by formula in (b) of this section, subject only to the provision that no fee shall be increased or decreased by more than 25 percent over the fee charged the previous year.

222.52 National Grasslands.

Grazing fees for National Grasslands will be established under concepts and principles similar to those in §222.51(b).

222.53 Other National Forest System lands.

Grazing fees for all other National Forest System lands not listed in §222.51(a), or §222.52, will be established under concepts and principles similar to those in §222.51(b), except that in some instances fees may be negotiated.

(Sec. 1, 30 Stat. 35 as amended (16 U.S.C. 55l): sec. 501, 65 Stat. 290 (31 U.S.C. 483a); 92 Stat. 1803 (43 U.S.C. 1901 note).)

[42 FR 24842, April 27, 1979]

Regulation 36 C.F.R. 213—Administration of Lands Under Title III of the Bankhead-Jones Farm Tenant Act by the Forest Service

213.1 Designation, administration, and development of National Grasslands.

(a) The land utilization projects administered by Department of Agriculture designated in paragraph (e) of this section hereafter shall be named and referred to as "National Grasslands".

(b) The National Grasslands shall be a part of the National Forest system and permanently held by the Department of Agriculture for administration under the provisions and purposes of Title III of the Bankhead-Jones Farm Tenant Act.

(c) The National Grasslands shall be administered under sound and progressive principles of land conservation and multiple use, and to promote development of grassland agriculture and sustained-yield management of the forage, fish and wildlife, timber, water and recreational resources in the areas of which the National Grasslands are a part.

(d) In the administration of the National Grasslands the resources shall be managed so as to maintain and improve soil and vegetative cover, and to demonstrate sound and practical principles of land use for the areas in which they are located. The Chief of the Forest Service shall, to the extent such action is feasible provide that policies for management of the Federally-owned lands exert a favorable influence for securing sound land conservation practices on associated private lands.

(e) National Grasslands in the following States and counties are hereby grouped and designated as indicated:

State in which grassland is located	Natl. grassland	Counties where located
Colorado	Pawnee	Weld.
	Comanche	Baca, Los Animas, Otero.
Idaho	Curlew	Oneida, Power.
Kansas	Cimarron	Morton, Stevens.
Nebraska	Oglala	Dawes, Sioux.

State in which grassland is located	Natl. grassland	Counties where located
New Mexico.....	Kiowa.....	Colfax, Harding, Mora, Union.
North Dakota.....	Cedar River.	Grant, Sioux.
	Sheyenne..	Ransom, Richland.
	Little Missouri.	Billings, Golden Valley, McKenzie, Slope.
Oklahoma	Rita Blanca.	Cimarron.
Oklahoma-Texas....	Black Kettle.	Roger Mills (Okla.), Hemphill (Tex.).
Oregon	Crooked River.	Jefferson.
South Dakota.....	Buffalo Gap	Custer, Fall River, Jackson, Pennington.
	Grand River.	Corson, Perkins, Ziebach.
	Fort Pierre	Jones, Lyman, Stanley.
Texas	Lyndon B. Johnson.	Montague, Wise.
	Rita Blanca.	Dallam.
	Caddo.....	Fannin.
	McClellan Creek.	Gray.
Wyoming	Thunder Basin.	Campbell, Converse, Crook, Niobrara, Weston.

[25 FR 5845, June 24, 1960, as amended at 27 FR 12217, Dec. 11, 1962, 28 FR 6268 June 19, 1963; 41 FR 38164, Sept. 9, 1976]

213.2 Authority for Chief, Forest Service, to group, define, and name national grasslands.

The Chief, Forest Service, is authorized to group the national grasslands into administrative units, define, change or modify their boundaries, and to provide such specific designations therefor as he finds

necessary and desirable for effective and economical administration thereof and for public and official reference thereto.

[33 FR 12370, Sept. 4, 1968]

213.3 Protection, occupancy, use, administration, and exercise of reservations.

(a) The rules and regulations applicable to the national forests as set forth in Title 36, Code of Federal Regulations, or as hereafter amended, supplemented, or promulgated, are hereby adopted as the rules and regulations to govern the exercise of reservations in conveyances to the United States and to prevent trespasses on and otherwise regulate the protection, use, occupancy, and administration of the National Grasslands and all other lands administered by the Forest Service under the provisions of Title III of the Bankhead-Jones Farm Tenant Act insofar as is practical and consistent with said act: *Provided,* That Forest Service officers may continue under delegated authority to acquire lands, to make exchanges, to grant easements and enter into leases, permits, agreements, contracts and memoranda of understanding involving such lands under such terms and conditions and for such consideration, fees or rentals as authorized by Title III of the said Act.

(b) Existing valid rights, reservations easements, leases, permits, agreements, contracts and memoranda of understanding affecting these lands shall continue in full force and effect so long as they remain valid in accordance with the terms thereof.

[27 FR 9217, Sept. 18, 1962]

213.4 Prior rules and regulations superseded.

Except as provided in §213.3, the rules and regulations heretofore issued for the land utilization projects are hereby superseded as to all such projects administered by the Forest Service, but not as to such project lands administered by other agencies.

[27 FR 9217, Sept. 18, 1962]

Regulation 36 C.F.R. 261—Prohibitions

Subpart A—General Prohibitions

261.2 Definitions.

The following definitions apply to this part:

(r) "Unauthorized livestock" means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by §222.20(b)(10), which is not authorized by permit to be upon the land on which the livestock is located and which is not related to use authorized by a grazing permit; provided, that noncommercial pack and saddle stock used by recreationists, travelers, other Forest visitors for occasional trips, as well as livestock to be trailed over an established driveway when there is no overnight stop on Forest Service administered land do not fall under this definition.

261.7 Livestock.

The following are prohibited: (a) Placing or allowing unauthorized livestock to enter or be in the National Forest System or other lands under Forest Service control.

(b) Not removing unauthorized livestock from the National Forest System or other lands under Forest Service control when requested by a forest officer.

(c) Falling to reclose any gate or other entry.

(d) Molesting, injuring, removing, or releasing any livestock impounded under §262.2 while in the custody of the Forest Service or its authorized agents.

Regulation 36 C.F.R. 262—Rewards and Impoundments

262.2 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock or livestock in excess of those authorized by a grazing permit on the National Forest System, which are not removed therefrom within the periods prescribed by this regulation, may be impounded and disposed of by a forest officer as provided herein.

(a) When a Forest officer determines that such livestock use is occuring, has definite knowledge of the kind of livestock, and knows the name and address of the owners, such livestock may be impounded any time five days after written notice of intent to impound such livestock is mailed by certified or registered mail or personally delivered to such owners.

(b) When a Forest officer determines that such livestock use is occurring, but does not have complete knowledge of the kind of livestock, or if the name of the owner is unknown, such livestock may be impounded any time 15 days after the date a notice of intent to impound livestock is first published in a local newspaper and in one or more local post offices. The notice will identify the area in which it will be effective.

(c) Unauthorized livestock or livestock in excess of those authorized by a grazing permit on National Forest System which are owned by persons given notice under paragraph (a) of this section, and any such livestock in areas for which a notice has been posted and published under paragraph (b) of this section, may be impounded without further notice any time within the 12-month period immediately following the effective date of the notice or notices given under paragraphs (a) and (b) of this section.

(d) Following the impoundment of livestock, a notice of sale of impounded livestock will be published in a local newspaper and posted at the county courthouse and in one or more local post offices. The notice will describe the livestock and specify the

date, time, and place of the sale. The date shall be at least five days after the publication and posting of such notice.

(e) The owner may redeem the livestock any time before the date and time set for the sale by submitting proof of ownership and paying for all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock. However, when the impoundment costs exceed fair market value a minimum acceptable redemption price at fair market value may be established for each head of livestock.

(f) If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be sold at public sale to the highest bidder, providing this bid is at or above the minimum amount set by the Forest Service. If a bid at or above the minimum amount is not received, the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the forest officer making the sale shall furnish the purchaser a bill or other written instrument evidencing the Sale. Agreements may be made with State agencies whereby livestock of unknown ownership and livestock of known ownership, which are not redeemed by the owner, are released to the agency for disposal in accordance with State law, *Provided,* That remuneration of proceeds from the sale of said animals in excess of costs of impoundment and to arrange for disposal of livestock of known ownership will be refunded to the former owner.

[42 FR 2961, Jan. 14, 1977; 43 FR 36245, August 16, 1978]

Regulation 36 C.F.R. 211—Administration Administrative Review Procedures

211.19 Review of decisions of forest officers.

(a) *Matters subject to review.* Any administrative decision of a Forest Service officer concerning the National Forest System and not excluded in paragraph (b) of this section is subject to administrative review under this section.

(b) *Matters excluded from review under this section.* (1) Decisions which are appealable to the Board of Contract Appeals of the Department of Agriculture under 7 CFR Part 24.

(2) Decisions which involve Freedom of Information Act denials under 7 CFR Part 1, Subpart A, or Privacy Act determinations under 7 CFR 1.118.

(3) Decisions in which jurisdiction of another Government agency, the Comptroller General, or a Court supersedes that of the Department of Agriculture.

(4) Decisions which are viewable under separate procedures, including, but not limited to, those under 36 CFR 252.14, 36 CFR 292.15(1), and 7 CFR 21.104.

(5) Decisions concerning contracts under the Federal Property and Administrative Services Act of 1949.

(6) Decisions which involve personnel matters.

(7) Decisions where the relief sought is reformation of a contract or the award of monetary damages.

(c) *Decisions of procedural matters.* Procedural decisions shall be appealed within 30 days after they are made. Such decisions include, but are not limited to, the following:

(1) Available levels of review.

(2) Rulings on requests for stay.

(3) Rulings on requests for extensions of deadlines.

(4) Rulings as to whether matters are excluded from review under this section.

(5) Rulings on timeliness.

(6) Rulings on intervention.

(d) *Notice.* (1) Written notice of a decision shall be provided to the party or parties

to a written instrument issued by the Forest Service and affected by the decision, and to any other interested person who has requested in writing notification of the specific decision.

(2) For persons not included under paragraph (d)(1) of this section, notification of a decision may be provided through publication in a newspaper of general circulation.

(e) *Decisions final unless appealed within 45 days.* Except as provided in paragraph (c) of this section, a decision shall be final unless an appeal is filed (or a stay is granted) within 45 days of the date of the decision or within 30 days of the date of receipt of the decision by parties entitled to notification under paragraph (d)(1) of this section. Implementation shall not be affected by the right to appeal unless a stay is granted.

(f) *Timely appeals.* Appeals must be filed in writing within the time limits of paragraph (e) of this section. Any paper filed pursuant to this section shall be deemed to have been filed when it is postmarked, or when it is received if other than the United States mails are used to accomplish delivery. If the date of mailing cannot be determined from the postmark, other evidence of mailing may be required by the Forest Officer, Saturdays, Sundays, and Federal holidays shall be included in computing the time allowed for filing, but when such time expires on a Saturday, Sunday, or Federal holiday, the time shall be extended to include the next following business day.

(g) *No extension for filing appeals.* The time for filing a notice of appeal may not be extended.

(h) *Format for appeal notice.* A notice of appeal must be in writing and must be filed with the Forest Officer who made the decision being appealed. The notice should identify specifically the decision being appealed, including its date, subject, the Forest Officer responsible for the decision, and the Reviewing Officer to whom the appeal is directed.

The relief requested should be described specifically. Any statement of reasons supporting the appeal must be included, or submitted within 15 days of the filling of the notice of appeal.

(i) *Stay of decision pending appeal.* A stay shall be considered only if the appellant submits information explaining the request for stay. The Forest Officer receiving such information shall immediately transmit the request to the Reviewing Officer, who shall, within 10 days of receipt, grant or deny the stay and notify the appellant in writing. No decision on the merits, in a case in which a stay was granted, shall be implemented during the 10-day period following the date of that decision.

(j) *Levels of review.* (1) The available levels of review are limited to the following sequence and number:

(i) Initial decisions of a District Ranger are subject to review by the Forest Supervisor, and, subsequently, by the Regional Forester.

(ii) Initial decisions of a Forest Supervisor are subject to review by the Regional Forester, and, subsequently, by the Chief.

(iii) Initial decisions of a Regional Forester are subject to review by the Chief.

(iv) Initial decisions of the Chief may be reviewed by the Secretary of Agriculture at his discretion. The request for review is deemed denied if the Secretary takes no action within 30 days after receiving the appeal.

(2) Decisions on review by the Chief shall be made available to all parties and to the Secretary. On his own initiative the Secretary may decide to review such a decision within 10 days of receipt. The Secretary will not consider any request for such review.

(3) The entry of additional parties at any stage does not extend the levels of review available or alter time requirements.

(4) A decision of a subordinate to a contracting officer of the Forest Service as defined in 7 CFR 24.10(d) on a contractual

matter appealable to the Board of Contract Appeals under 7 CFR 24.4(e) shall be subject to review by such contracting officer in accordance with the procedures of this section but shall be limited to a one-level review under this section.

(k) *Procedures for review.* At each level of review, the Forest officer responsible for the decision shall, following receipt of a statement of reasons, prepare a responsive statement concerning the decision being contested. Such a statement shall be prepared within 30 days of receipt of appellant's statement of reasons and a copy shall be furnished to appellant. The appellant does not have to reply to this responsive statement, but may choose to do so by filing a concise reply within 15 days after receiving the statement. After compiling the review record as it is defined in paragraph (1) of this section, the Forest Officer shall transmit the entire record to the Reviewing Officer for his consideration.

(1) *Administrative review record.* The administrative review record shall consist on one identifiable set of documents, open for public inspection, containing the following: All notices of appeal, comments, statements of reasons by appellants and third parties, procedural determinations, all correspondence, summaries of oral presentations and accompanying documents, decisions of viewing Officer's receipt of the complete ments or materials as may, in the discretion of any reviewing officer, be considered necessary to reach a decision.

(m) *Decision on review.* A review decision shall be based only on the record, as defined in paragraph (1) of this section, and should be made within 30 days of the Reviewing Officer's receipt of the complete record. If it becomes necessary for the decision period to exceed 30 days, the Reviewing Officer shall so notify the appellant in writing.

(n) *Remand for additional information or further action.* If, on review, the record is con-

sidered inadequate to support a decision on the appeal, the Reviewing Officer may request such additional evidence or information as may be appropriate or may remand the case with instructions for further action.

(o) *Oral presentation.* The appellant may, at the time of filing the statement of reasons in an appeal, request in writing the opportunity to present his views orally to the Reviewing Officer or his designee, and to include documentary evidence relevant to such oral presentation. The request shall be submitted to the Forest Officer responsible for the decision being appealed. The Reviewing Officer shall, within 15 days of the request, grant or deny the request and notify the appellant in writing of his decision. If an oral presentation is allowed, the Reviewing Officer shall determine the date, location, and Forest Service representative to hear the presentation. Subsequently, the appeal record shall include a brief summary of the oral presentation and any documentary evidence received at the presentation.

(p) *Multiple parties.* (1) Any person or organization may participate in an administrative review at any level by submitting written comments to the Reviewing Officer. Such comments will be added to the review record.

(2) At the discretion of the Reviewing Officer, any person or organization having an immediate interest in the subject of an administrative review may intervene at any level of the review process, subject to the same procedural requirements as the original appellants.

(i) Appellants and intervenors must concurrently furnish copies of all submissions to each other; otherwise, such submissions may be removed from the review record.

(ii) Any party seeking review of a decision at a higher level must furnish copies of a notice of appeal to the decisionmaking officer and to all other named parties to the administrative review.

(iii) In reviews involving multiple parties, the Reviewing Officer may prescribe such special procedures as may be necessary to expedite the decisionmaking process.

(q) *Consolidation of appeals.* Multiple appeals of the same decision may be consolidated by the Reviewing Officer through the issuance of one appeal decision with copies to be sent to all parties.

(r) *Scope of appeal.* The appellant and any intervenor shall, throughout all levels of review, be confined to the subject matter of the decision originally appealed.

(s) *Administrative finality.* Decisions at the final level of review specified in paragraph (j) of this section shall constitute the final administrative determinations of the Department of Agriculture.

(t) *Continuance of appeals.* The provisions of 36 CFR 211.20 to 211.37 and the Rules of Procedure of the Board of Forest Appeals (36 CFR 211.101 to 211.119) shall remain in effect for cases pending on September 25, 1974. The provisions of 36 CFR 211.2 shall remain in effect for cases filed between September 26, 1974, and the effective date of 36 CFR 211.19 (June 28, 1977).

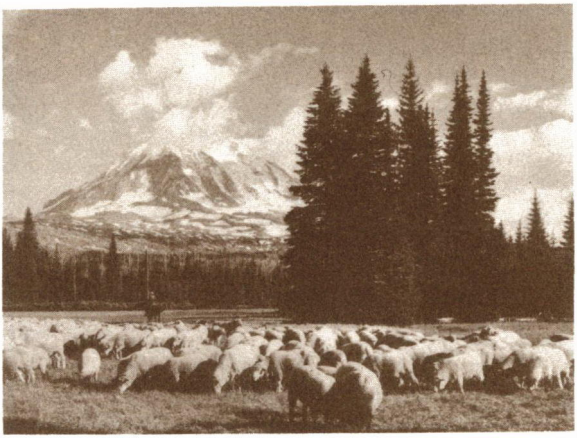
(30 Stat. 35 as amended, 50 Stat. 526 (16 U.S.C. 551, 7 U.S.C. 1011(f), 5 U.S.C. 301))

[42 FR 32781, June 28, 1977]

293.7 Grazing of livestock.

(a) The grazing of livestock, where such use was established before the date of legislation which includes an area in the National Wilderness Preservation System, shall be permitted to continue under the general regulations covering grazing of livestock on the National Forests and in accordance with special provisions covering grazing use in units of National Forest Wilderness which the Chief of the Forest Service may prescribe for general application in such units or may arrange to have prescribed for individual units.

(b) The Chief, Forest Service, may permit, subject to such conditions as he deems necessary, the maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a Wilderness when it was incorporated into the National Wilderness Preservation System. Additional improvements or structures may be built when necessary to protect wilderness value.



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U.S. Department of Agriculture, Washington, D.C. 20013

Regional Headquarters

The addresses of the nine regional headquarters and the area included in each Region are listed below. States containing no National Forest are omitted. Write to the Regional Forester, Forest Service, U.S. Department of Agriculture, at one of the addresses given.

Northern Region: Federal Bldg., Missoula, Mont. 59807. Northern Idaho, Montana, North Dakota, and northwestern South Dakota.

Rocky Mountain Region: 11177 West 8th Ave., Box 25127, Lakewood, Colo. 80225. Colorado, Kansas, Nebraska, South Dakota, and eastern Wyoming.

Southwestern Region: 517 Gold Ave., SW., Albuquerque, N. Mex. 87102. Arizona and New Mexico.

Intermountain Region: 324 25th St., Ogden, Utah 84401. Southern Idaho, Nevada, Utah, and western Wyoming.

Pacific Southwest: 630 Sansome St., San Francisco, Calif. 94111. California and Hawaii.

Pacific Northwest Region: 319 SW. Pine St., P.O. Box 3623, Portland, Ore. 97208. Oregon and Washington.

Eastern Region: 633 West Wisconsin Ave., Milwaukee, Wis. 53203. Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin.

Southern Region: 1720 Peachtree Rd., NW., Atlanta, Ga. 30309. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, and the Virgin Islands.

Alaska Region: Federal Office Bldg., Box 1628, Juneau, Alaska 99802. Southeastern Alaska.

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